

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|-------------------------------------|---------------------------|--|---|---------------------------------|
| Investigator: Rolando Vasquez | Team: Squad #13 | CCRB Case #: 201806330 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 07/21/2018 5:17 AM | Location of Incident: § 87(2)(b) | Precinct: 75 | 18 Mo. SOL 1/21/2020 | EO SOL 1/21/2020 | |
| Date/Time CV Reported Sat, 07/21/2018 5:38 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 08/03/2018 11:32 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. SSA Robert Martinez | 01369 | 922716 | 075 PCT |
| 2. POM Ramil Casimir | 11100 | 950170 | 075 PCT |
| 3. An officer | | | 075 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POM William Schumacher | 04618 | 949640 | 075 PCT |
| 2. POM Thomas Costigan | 11387 | 960396 | 075 PCT |
| 3. POM Anthony Waite | 09649 | 961434 | 075 PCT |
| 4. POM Anthony Varrone | 15385 | 961405 | 075 PCT |
| 5. POM Marcus Rivera | 09588 | 961173 | 075 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.SSA Robert Martinez | Abuse: Sergeant Robert Martinez entered § 87(2)(b) in Brooklyn. | |
| B.SSA Robert Martinez | Abuse: Sergeant Robert Martinez stopped § 87(2)(b) | |
| C.SSA Robert Martinez | Discourtesy: Sergeant Robert Martinez spoke discourteously to § 87(2)(b) | |
| D.SSA Robert Martinez | Force: Sergeant Robert Martinez used physical force against § 87(2)(b) | |
| E.POM Ramil Casimir | Force: Police Officer Ramil Casimir used physical force against § 87(2)(b) | |
| F.SSA Robert Martinez | Force: Sergeant Robert Martinez used pepper spray against § 87(2)(b) | |
| G.SSA Robert Martinez | Force: Sergeant Robert Martinez used physical force against § 87(2)(b) | |
| H.POM Ramil Casimir | Force: Police Officer Ramil Casimir used physical force against § 87(2)(b) | |
| I. An officer | Force: An officer used a chokehold against § 87(2)(b) | |
| J. An officer | Force: An officer restricted § 87(2)(b)'s breathing. | |
| K.SSA Robert Martinez | Abuse: Sergeant Robert Martinez forcibly removed § 87(2)(b) to the hospital. | |

Case Summary

On July 21, 2018, § 87(2)(b) filed this complaint on behalf of her brother, § 87(2)(b)

On July 21, 2018, at about 5:17 a.m., Sgt. Robert Martinez entered the front yard of § 87(2)(b) in Brooklyn (**Allegation A – Abuse of Authority**, § 87(2)(g)). Sgt. Martinez stopped § 87(2)(b) (**Allegation B – Abuse of Authority**, § 87(2)(g)). Sgt. Martinez told § 87(2)(b) “Motherfucker, you’re not going nowhere. You’re fucking under arrest” (**Allegation C – Discourtesy**, § 87(2)(g)). Sgt. Martinez punched § 87(2)(b) in the head (**Allegation D – Force**, § 87(2)(g)). PO Ramil Casimir of the 75th Precinct, allegedly punched § 87(2)(b) (**Allegation E – Force**, § 87(2)(g)). Sgt. Martinez used pepper spray against § 87(2)(b) (**Allegation E – Force**, § 87(2)(g)). Sgt. Martinez and PO Casimir forcibly took § 87(2)(b) to the ground (**Allegation G-H – Force**, § 87(2)(g)). An officer allegedly used a chokehold against § 87(2)(b) which allegedly restricted his breathing (**Allegation I-K – Force**, § 87(2)(g)). Sgt. Martinez forcibly removed § 87(2)(b) to the hospital for psychological evaluation (**Allegation K – Abuse of Authority**, § 87(2)(g)). No arrest or summonses resulted from this incident.

§ 87(2)(b), § 87(2)(g)

The statute of limitations for this case expired on January 21, 2020, though given the physical force alleged and captured on BWC footage, the criminal exception applies.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Robert Martinez entered § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Sergeant Robert Martinez stopped § 87(2)(b)

Allegation (C) Discourtesy: Sergeant Robert Martinez spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that he left his house to go to work, noticed officers in his gated front yard, and asked what they were doing (BR02). Sgt. Martinez told § 87(2)(b) they were looking for crack and cocaine. § 87(2)(b) told Sgt. Martinez that there was no crack in his yard and left his yard to go to work. § 87(2)(b) patted his pocket and realized he did not have his key, so he walked back into his yard. Sgt. Martinez, who was in § 87(2)(b)'s way, told § 87(2)(b) to produce his identification. § 87(2)(b) refused. Sgt. Martinez told § 87(2)(b) he was under arrest and grabbed his arms.

§ 87(2)(b)'s minor sister, § 87(2)(b) and mother, § 87(2)(b) were uncooperative with the investigation (See IAs for contact attempts).

Sgt. Martinez' body worn camera video shows that Sgt. Martinez, PO William Schumacher, of the 75th Precinct, and PO Casimir were conducting an investigation into narcotics activity in the vicinity of § 87(2)(b) (BR03). At the 5:00 mark on the video player visible on the bottom of the screen, Sgt. Martinez enters the gated front yard of § 87(2)(b) and picks up a newspaper bag in the yard. § 87(2)(b) exits from his house and questions Sgt. Martinez about why he is on his property. § 87(2)(b) leaves the yard, but soon reenters the yard, and walks back up the stairs of his front porch toward his house while verbally arguing with Sgt. Martinez. At the 6:00 mark on the video player, Sgt. Martinez grabs § 87(2)(b) by the arm and says, "Motherfucker, you're not going nowhere. You're fucking under arrest. Fuck you."

PO Casimir testified that he, PO Schumacher, and Sgt. Martinez responded to a radio run regarding trespassers on Lincoln Avenue between Atlantic Avenue and Liberty Avenue (BR04). Upon arriving at the location, a group of men was observed in front of § 87(2)(b) engaged in a narcotics transaction and they were stopped. The men are known gang dealers who routinely conduct drug sales on this block of Lincoln Avenue and who store and hide drugs in the front yards of residential buildings on the block as part of their operation. The sidewalk in front of § 87(2)(b) also has a large tree which provides cover to the drug dealers because its branches have fallen over and it obstructs the view from the street. After stopping the men, Sgt. Martinez began canvassing for any narcotics the men may have left behind. Sgt. Martinez entered the front yard of § 87(2)(b). § 87(2)(b) exited his house, and Sgt. Martinez explained to him that the officers were responding to drug dealers in the neighborhood. § 87(2)(b) left his yard. § 87(2)(b) threw his bag on the ground, walked back into his yard with his fists clenched and chest stuck out, which struck PO Casimir as aggressive, and walked up to Sgt. Martinez. Sgt. Martinez started to handcuff § 87(2)(b). PO Casimir believed Sgt. Martinez began to do this because § 87(2)(b) was interfering with the officers' narcotics investigation.

The NYPD's Department Advocate's Office confirmed that as of December 1, 2019, Sgt. Martinez retired from the NYPD (BR05). He therefore could not be interviewed by the CCRB.

§ 87(2)(g)

Allegation (D) Force: Sergeant Robert Martinez used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Ramil Casimir used physical force against § 87(2)(b)

Allegation (F) Force: Sergeant Robert Martinez used pepper spray against § 87(2)(b)

Allegation (G) Force: Sergeant Robert Martinez used physical force against § 87(2)(b)

Allegation (H) Force: Police Officer Ramil Casimir used physical force against § 87(2)(b)

Allegation (I) Force: An officer used a chokehold against § 87(2)(b)

Allegation (J) Force: An officer restricted § 87(2)(b)'s breathing.

Allegation (K) Abuse of Authority: Sergeant Robert Martinez forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) testified that Sgt. Martinez told him he was under arrest and grabbed his arm. § 87(2)(b) pulled away. Sgt. Martinez said, "Stop resisting," and punched § 87(2)(b) in the face

and on the top of his head with closed fists. PO Casimir stepped in between Sgt. Martinez and § 87(2)(b) pushed PO Casimir and backed away from the officers. Sgt. Martinez and PO Casimir punched § 87(2)(b) multiple times all over his body including on his head, face, shoulders, and stomach. § 87(2)(b) fought back in self-defense by punching and pushing the officers. Sgt. Martinez and PO Casimir pushed § 87(2)(b) to the ground. Additional officers arrived and all the officers tried to get § 87(2)(b) handcuffed. However, § 87(2)(b) was mad and was swinging his fists and kicking his legs. An officer, whom § 87(2)(b) could only describe as being dressed in uniform, pressed his knee against § 87(2)(b)'s neck. § 87(2)(b) stopped moving because he could not breathe due to the knee in his back and being physically exhausted. § 87(2)(b) was taken to the hospital for psychological evaluation. § 87(2)(b) sustained bruising and lacerations on his face from being punched and from hitting the ground during the altercation.

At the 6:00 mark on the video player timestamp of Sgt. Martinez' BWC footage, visible at the bottom of the screen, Sgt. Martinez grabs § 87(2)(b) and tells him he is under arrest. § 87(2)(b) pulls away from Sgt. Martinez toward the top of his porch. Sgt. Martinez and PO Casimir give § 87(2)(b) repeated commands to put his hands behind his back. § 87(2)(b) repeatedly yells, "No. For what?" § 87(2)(b)'s hands are moving in front of him, but due to a rapidly moving camera, his specific actions cannot be discerned. At the 6:22 minute mark, Sgt. Martinez punches § 87(2)(b) in the head (this action is more clearly visible at the 1:25 minute mark in PO Casimir's BWC video [BR06]). At the 6:30 minute mark of Sgt. Martinez' BWC video, Sgt. Martinez tells § 87(2)(b) "I'm going to mace you, bro" and then pepper sprays him. At the 7:40 minute mark, § 87(2)(b) is brought to the ground. Sgt. Martinez, PO Schumacher, and PO Casimir struggle with § 87(2)(b) until the 9:10 minute mark when § 87(2)(b) is handcuffed, though the specific actions they take cannot be seen.

Starting at the 1:20 minute mark of the video player timestamp on PO Casimir's BWC footage, visible at the bottom of the screen, PO Casimir is seen at various points reaching and holding § 87(2)(b)'s arm (BR06). At other times, he is seen with his forearm pressed against § 87(2)(b)'s torso. The video does not show PO Casimir punch § 87(2)(b). However, due to the rapid movements of the BWC, many of PO Casimir's specific movements cannot be clearly discerned.

Starting at the 1:50 minute mark of the video player timestamp of the second video from PO Casimir's BWC video, visible at the bottom of the screen, § 87(2)(b) is arguing with officers as they are trying to take him off the porch (BR07). § 87(2)(b) is brought to the ground, with his head going toward the right of the screen, where PO Casimir and PO Schumacher are positioned, once he lands on the ground. At the 2:12 minute mark, a gasping sound is heard. § 87(2)(b) continues to verbally complain to the officers but is otherwise not making any other physical movements. This segment of the incident is also apparent in PO Schumacher's BWC video starting at the 3:35 minute mark of the video player timestamp, visible at the bottom of the screen, through the 4:30 minute mark (BR08). Neither video definitely depicts whether PO Casimir or PO Schumacher place § 87(2)(b) in a chokehold.

PO Casimir testified that once Sgt. Martinez grabbed § 87(2)(b) to handcuff him, PO Casimir approached to help grab § 87(2)(b)'s arms so he could be handcuffed. § 87(2)(b) pulled his arms away, and tightened and flexed his arms, which prevented PO Casimir from getting a hold of his arms. PO Casimir did not remember if he punched § 87(2)(b). PO Casimir did not know what actions Sgt. Martinez took to control § 87(2)(b). PO Casimir and Sgt. Martinez pulled § 87(2)(b)

§ 87(2)(b) to the ground in order to control him and get him handcuffed. § 87(2)(b) pushed PO Casimir and kicked PO Casimir's legs. § 87(2)(b) rolled onto his stomach and placed his arms underneath him. Eventually, PO Casimir and Sgt. Martinez were able to pull § 87(2)(b)'s arms together and get him handcuffed. Sgt. Martinez determined that § 87(2)(b) would be removed to the hospital.

According to the 75th Precinct Roll Call office, PO Schumacher is on military leave through July 2020, so he could not be interviewed by the CCRB.

Officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or when it is reasonable to place a person in custody. NYPD Patrol Guide, Procedure 221-01 (BR09).

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- § 87(2)(b)
- Sgt. Martinez had been a member of the service for 21 years and has been a subject in 44 complaints involving 144 allegations, 16 of which were substantiated.
 - 200205713 involved a substantiated discourtesy (word) allegation against Sgt. Martinez for which the Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - 200704280 involved substantiated physical force and threat of force allegations against Sgt. Martinez for which the Board recommended Charges and the NYPD imposed no discipline.
 - 201101407 involved substantiated stop and frisk allegations against Sgt. Martinez for which the Board recommended Instructions and the NYPD imposed Instructions.
 - 201310387 involved a substantiated physical force allegation against Sgt. Martinez for which the Board recommended Charges and for which Sgt. Martinez was found guilty at APU trial and forfeited 10 vacation days.
 - 201508658 involved substantiated discourtesy (word and action) allegations against Sgt. Martinez for which the Board recommended Command Discipline B and the NYPD imposed no discipline.
 - 201510169 involved substantiated stop, frisk, and search of person allegations against Sgt. Martinez for which the Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
 - 201606105 involved a substantiated detainment allegation against Sgt. Martinez for which the Board recommended Command Discipline B and the NYPD imposed no discipline.
 - 201610287 involved substantiated vehicle stop, vehicle search, frisk, interference with video recording, and discourtesy (word) allegations against Sgt. Martinez for which the Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
- PO Casimir has been a member of the service for eight years and has been a subject in eight CCRB complaints involving 15 allegations, none of which were substantiated. PO

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- As of December 16, 2019, the NYC Office of the Comptroller has no record of a Notice of Claim being filed about this incident (BR06).
- According to the Office of Court Administration, § 87(2)(b) and § 87(2)(b) have no history of convictions in New York City (BR07-09).

Squad No.: 13

Investigator: Rolando Vasquez
Signature

SI Rolando Vasquez
Print Title & Name

04/01/2020
Date

| | | | |
|---------------|--------------------------------------|---|---------------------------|
| Squad Leader: | <u>IM Laura Kastner</u> Signature | <u>IM Laura Kastner</u> Print Title & Name | <u>04/01/2020</u> Date |
|---------------|--------------------------------------|---|---------------------------|

| | | | |
|-----------|--------------------|-----------------------------|---------------|
| Reviewer: | _____ Signature | _____ Print Title & Name | _____ Date |
|-----------|--------------------|-----------------------------|---------------|